1943

File No. O.J.P.C/43

Legal Department

A **BRANCH**

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Subject:— Opinions under the Indian Penal Code

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File No. O.J.P.C/43

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C O N T E N T S.

Legal Department No. C.I.P.C. /43

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5 copies

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It is true that a mere offer to pay an illegal gratification to a public servant although no money or other consideration is actually produced amounts to an attempt to bribe under sectica 116 read with section 161. I.P.C.; but the burden of proof of such offer would be on the prosecution. The evidence in the present case appears to be discrepant. Mr. Sak Shroff states at p. 9 ante that Dharamshi Madhavji offered to give Mr. Shimpi Rs. 5/- whereas Mr. Shimpi and others state that the off was made to Mr. Kawara. In the circumstance it appears doubtful if the prosecution of Dharamshi would be successful.

Id/-R.T.K.
14-1

U.K. to F.D.(Supply) No. 44-Confl.

dated 25-1-1943.

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6-7-
4 copies

OPINION OF THE R.L.A.

In this case the more obvious offence is that under section 182. Indian Penal Code. It is doubtful whether the offence of cheating can be proved regarding the proceedings before the Sub-Divisional Magistrate. The complaint regarding the offence under section 182. I.P.C. must be lodged by the public servant concerned i;e. in this case Mr. Pradhan. Please see section 195(1)(a) of the Criminal Procedure Code. The Sub-Divisional Magistrate may therefore be instructed to lodge a complaint of offences under sections 182 and 417 of the Indian Penal Code. If that prosecution faint fails, Secretary, Public Service Commission, may consider lodging a complaint of cheating or attempt.

Sd/-P.N.Moos.
19-5-43

Remembrancer of Legal Affairs.

U.O. to H.D.,No. 224-Conf... dated 19th May 1943.

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4 copies

OFFICE OF THE H.L.A.

In the Bombay Sentinel of 14th April 1943 Ellis & Martyn inserted an advertisement of "Sterilina" which is guaranteed to regulate periods within 24 to 48 hours. At the top of the advertisement are the words "Missed Menses? Don't worry"; and at the foot appears a warning "As this hormone Estrine is found to cause abortion, according to the British Medical Journal, STERILINE should never be tried in case of suspected pregnancy without consulting a qualified doctor."

In the Bombay Chronicle dated 16th April 1943 appears another advertisement of "Menso" which is described as "Harmless, ex surest remedy for missed menses of any cause, use not in pregnancy, causes miscarriage".

The Surgeon General is of the view that the two advertisements are designed to sell as abortifacients. The H.L.A. is requested to advise whether the d advertisers and publishers can be prosecuted for advertising medicinal drugs which cause abortion or d miscarriage.

Attention is invited to R.L.A.'s opinion No. 6546 dated 7th December 1937 where a similar question had been considered. The principal question appears to be whether the medicinal da drugs advertised would have the effect of regulating periods . On this technical point the R.L.A. is not qualified to give an answer. If they do then the fact that they are also abortifacients would not be sufficient to bring the publishers and advertisers within the mischief of any provision of the Indian Penal Code for advocating the sale of harmful drugs. It is true that the warning that the drugs should not be used in pregnancy may have been inserted for the purpose of encouraging their use for abortion or miscarriage. But it is very doubtful if such a warning, when coupled with the legitimate purpose for which the drugs have been advertised, can be deemed to have been inserted for the sole purpose of pointing out the efficacy of the drugs as abortifacients. The advertisements as worded cannot be interpreted to amount to an abetment of abortion. Without further evidence no prosecution under the Indian Pen Penal Code would be feasible. It is really for the Administrative Department to consider whether these two medicinal preparations infringe any of the provisions of the Drugs Act, 1940.

Id/-P.N.Roon.

Remembrancer of Legal Affairs.

U.R. to H.D..No. 4264, dated 17th June 1943.

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OFFICE OF THE R.L.A.

To constitute defamation under section 499, I.P.C., it is necessary that the words complained of must contain an imputation concerning some particular person or persons whose identity can be established. In the article entitled "Conspiracy to harass, blackmail and rob travellers" appearing in the issue of "Blitz" dated July 17, 1943, an allegation has been made that the Police and Customs Inspectors are in league with Public Prosecutor in this conspiracy to harass, blackmail and rob innocent travellers. This is clearly a defamatory imputation against the Police and Customs Inspectors in charge of Castle Rock Station and ~~[illegible]~~ the Public Prosecutor whose identity can be established. The Police and Customs Inspectors at Castle Rock and the Public Prosecutor, Belgaum can prosecute the publisher of Blitz for defamation.

2. The article also contains another allegation that a woman was made to part with as much as Rs. 500/- to a Sub-Inspector before her harassment ended with a fine. Read in its context it appears that the Sub-Inspector against whom the imputation of corruption has been made is the one who was in charge of the investigation of the case against the woman who was convicted and sentenced to pay a fine. If it is possible to ascertain the criminal case and the Sub-Inspector who investigated it, that Sub-Inspector can also prosecute the publisher for defamation.

Id/-P.R.Hoon.
15-9

O.C. Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 194-L, dated the 16th September 1943.

S.A.K.
7-7-
4 copies

P. 57.

OFFICE OF THE R.L.A.

Books and pamphlets imported after the Government of India's Notification Customs No. 21-C dated 14th June 1941 can be confiscated under the Sea Customs Act. In the absence of a full account of the gramphone records it is not possible to express any definite opinion . Prima facie these records do not offend against section 153 A of the Indian Penal Code or clause (f) of rule 34 (6) of the Defence of India Rules.

Sd/-P.N.Mecs.
27-7

Remembrancer of Legal Affairs.

U.R. to H.D.No. 110-L . dated the 30th July 1943.

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OFFICE OF THE R.L.A.

In commenting upon the seizure by the Police of a large quantity of illicit liquor at Juhu the Bombay Sentinel in its issue of 8th September 1943 under the caption "New Brooms in P.D. sweep up plague spot in Suburbs" drew attention to the open bootlegging activities of one Sohrab Irani in the City proper and to the laxity of the Prohibition Police in that connection. It criticised Deputy Commissioner, Nayampalli of the Prohibition Police for his inaction and urged upon Government to take more stringent steps to root out the evil.

2. The only passage criticising Rao Saheb Nyampalli runs as follows:-

"Duputy Commissioner, Nyampalli, in charge of Prohibition refused to listen to a social worker who drew his attention to the activities of the notorious Sohrab Irani of Proctor Road just off Grant Road, who runs more than one shop. He could not believe it and was so shocked at the slur cast on Sohrab-or the Prohibition Police one is not sure which that he bluntly told the visitor to "Get out".

Mr. Nayampalli has now gone on leave and new brooms seem to be at work in the Department. More power to their elbows. It is to be hoped they will not rest on their oars, after bringing off this coup in the Suburban areas. They must open a Second Front in the heart of the City and clear out the retail fry that infest almost every corner of it. They might kmkmx begin with Sohrab who boasts that he can defy the world."

All that this passage conveys to the lay reader is that Rao Saheb Nayampalli of the Prohibition Police was so scandalised by the unfair attack on Sohrab Irani or on the Prohibition Police that he refused to move in the matter. The mkjmkm object of the passage is to show that Rao Saheb Nayampalli's judgment of the innocence of Sohrab Irani and the efficiency of the P Prohibition Department had been proved to be erroneous . The passage though couched in caustic and somewhat objectionable language is not, in my opinion defamatory of Rao Saheb Nyampalli and would it seems be saved by the Second Exception to section 499, I.P.C.

S.A.K.
7-7-
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3. In the same issue of the Bombay Sentinel under the heading "Twilight Twitters", the Editor writes as follows:-

"You will hardly believe-

That at long last the Prohibition Department have xxxxx started to clean up the illicit liquor stills in the Suburban area;

That still there are more of these pestiferous stills and it is to be hoped the P.D. will not rest on their oars but & keep the stills moving;

That Deputy Commissioner Nyampalli has gone on leave and was spared the shock of the discovery of this mammoth liquor factory at Juhu;

That to an Amurath an Amurath succeeds but in this case a Dyer succeeded and that perhaps accounts for the milk. or the spirit. in the cokeraut;

That D.C. Nyampalli wouldn't have believed it possible- might even have told one of his own officers to "Get out"! if it had been suggested to him;

That Sohrab Irani and a few other busy retailers of the dirty stuff a that is sold in the city are trembling in their shoes wondering what will happen next!;

That people can even hear the bottles and glasses rattling- and clinking in Proctor Road not with Joviality but due to the inmates tremors; and

That Hardy is bewailing the departure of Stan for Marbouri and not even the fiddling of Faddel. the substitute can console him the newcomer being no exponent of comedy."

The object of the above comments appears to be to show that Rao Saheb Nayampallie as Deputy Commissioner in charge of the Prohibition Department was not particularly alert in the discharge of his duties with the result that Prohibition was a failure and illicit distillation on the increase. In my opinion these comments are not defamatory and would be saved by the Second Exception to section 499, I.P.C.

Sd/-P.N.Moos.
13-10

/Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.) No. 124-P, dated the 14th October 1943.

S.A.K.
[illegible]

Office of the R.L.A.

It appears that two offences have been alleged to in this case; (1) obstruction to or interference with a lawful authority in the discharge of his public functions; (2) causing hurt to a public servant in the discharge of his duty as such public servant. Obstruction to or interference with an Inspector while delivering ration cards under the orders of Govt. is an offence punishable under rule 120(c) of the Defence of India Rules read with clause 10 of the Bombay Rationing order, 1943; and it also amounts to an offence under section 186, Indian Penal Code. But the former is a ~~appears from~~ cognizable offence while the latter is non-cognizable. It appears from the statement of Mr. Contractor, the Inspector in the present case, that the scuffle took place after he delivered the ration card to Mr. Taylor who signed in token of receipt. It is not known whether Mr. Contractor had anything else to do which was interfered with by the scuffle. If there was nothing left to be done, it is doubtful whether there was any obstruction to or intereference with Mr. Contractor in the lawful discharge of his duties.

2. Voluntarily causing hurt to a public servant in the discharge of his duty as such public servant or with the intent to prevent or deter that person or any other public servant, or in consequence of anything done or attempted to be done by that in the lawful discharge of this duty as such public servant is punishable under section 332, Indian Penal Code; and it is a cognizable offence. In the present case Mrs. Taylor was aggressive and first attacked Mr. Contractor who retaliated whereupon Mrs. Taylor, Mr. Taylor and the their servant all three set upon Mr. Contractor and thrashed him him. Mr. Contractor's act of retaliation was probably in exercise of the right of private defence which is not an offence in return (cf. 41 I.C. 832). If it was in excess of the right of private defence the later beating done to Mr. Contractor by both Mr. and Mrs. Taylor and their servant would be excusable. But the first unprovoked slap given by Mr. Taylor to Mr. Contractor does not, in any case, appear to be excusable . There appears prima facies a good case against Mrs. Taylor for the offence under section 332, I.P.C. Moreover section 99, I.P.C. affords protection to a public servant.

3. Unfortunately the facts of the case are not quite clear. The Statements of Mr. Jumni, who [illegible], and Mr. Taylor have

not been recorded. A bare statement that they corroborate Mr. Contractor will not be sufficient to assess the statement of Mr. Contractor. Even the statement of Mr. Contractor has not been recorded in full. As stated above, the offences are cognizable. If F.D.(Supply) wish to prosecute Mrs. Taylor, it is desirable that the case should be entrusted to the Police for investigation.

Id/-P.N.Moos.
26-10

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply), No. 7181, dated the 27th October 1943.

S.A.K.
7-7-
4 copies

Office of the H.L.A.

One K.V.Kutty who styles himself as a social worker addressed the following letter to the Under Secretary, Home Department:-

"I am very sorry to write to you about the police control of Prohibition Department, Bombay. Since long ago I am writing to the Commissioner of Police in regard to the illegal activities of some persons in the hotels of the city and their names are as follow:-

(1) Sorab Irani, Proctor Road near Grant Road. (2) Vijaya Nagar Hotel and Kshtriya Hotel, situated at Dadar (B.B.C.I.). These people are selling illicit liquor, ganja, spirit, opium etc. in the botes and this business is going on there for very long time. Their illegal activities were exposed in the columns of the "Bombay Sentinel" but so far no action has been taken against them by the police. It shows that police may be encouraging these people and may be taking bribes as Mr. Nayampalli who was Dy. Commissioner of Excise Prohibition Department of Bombay.

I therefore request you to investigate in the matter and put a stop to this illegal business which seems to be flourishing day by day. "Thanking you".

2. It is I think clear that the letter contains an imputation of corruption against Rao Saheb Nayampalli of the Prohibition Police and is prima facie defamatory. It is immaterial whether the imputation is made in a direct manner or indirectly by such hints or modes of expression as are likely to convey the intended meaning to the person to whom the libel was published. On the assumption that the imputation is ill-founded, the question arises whether the writer of the letter a comes within the protection of the second, Exp Eighth or Ninth Exception to section 499 of the Indian Penal Code.

The Second Exception lays down that it is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, so far as his character appears in that conduct and no further.

The Eighth Exception states that it is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject matter of accusation.

S.A.K.
7-7-
4 copies

The Ninth Exception enacts that it is not defamation which made an imputation on the character of another, provided that the xx imputation be made in good faith for the public good.

3. Nothing is said to be done in good faith which is done without xxx due care and attention (section 52, I.P.C.). The phrase "due care and attention "implies genuine efforts to reach the truth and not the ready acceptance of an ill-natured belief. When a question arises as to whether a person acted in good faith, then it develves upon him to show not merely that he had a good intention but that he exercised such care and skill as the duty reasonably demands for its due discharge. The expression "Public good" is the the good of the general public as contra-distinguished from that of an individual. A privilege does not justify publication in excess of the purpose or object which gives rise to it. A person making an imputation cannot escape liability, if in addition to statements which would be protected, he goes further and makes false and uncalled for statements, for he cannot then be regarded as acting in good faith. Publication of a defamation cannot be justified if it has the effect of seriously injuring the reputation of others without the least inquiry into its truth. Every subject has a right to comment on those acts of public servants which a concern him as a subject of the realm or which concern the public good if he does not make his commentary a cloak for malice and slander. The conduct of a public servant cannot be assailed as dishonest simply because the writer fancies such conduct is open to suspicion. The law does not sanction attacks upon public servants., which allowed would be destructive of their character and honour unless such attacks are well-founded. Absence of reasonable cause for making an imputation is evidence of the absence of good faith. Honesty of purpose is essential to protect accusations made. Good faith on the part of person who makes or published an accusation must be established. There can be no good faith where there is express malice or evidence of culpable negligence or recklessness in the dissemination of a libel.

4. Bearing these legal propositions in mind there would be some justification to hold that in levelling the accusation of corruption against Rao Saheb Nayampalli, the writer of the letter ahad neither acted in good faith nor for the public good.

S.A.K.
7-7-/4 copies

The onus of bringing himself within the protection of the Exceptions would lie on the writer; and unless he discharges the onus to the satisfaction of the Court, the letter must be regarded as prima facie defamatory. In the case of Campbell Spottiswoode(1863) 3B & S 769 it was held that when a writer in commenting on public matters makes imputations on the character of individuals concerned in them, which are false and libellous and beyond the limits of fair comment, it is no defence to urge that he bona-fide believed in the truth of those imputations. In my opinion, therefore, Kutty's letter is prima facie defamatory and the burden will be on kutty to show that it falls within the protection of any of the exceptions.

Sd/-P.N.Moos.
17-11

Remembrancer of Legal Affairs.

U.H. to H.D .. No. 8615, dated the 20th November 1943.

S.A.K.
7-7-
4 copies

Office of the R.L.A.

The sentence "Those merchants who were carrying on this 'sacred work' were the frequent visitors to the 'Shebaw's Kan Palace' " is a quotation from an earlier number. The papers had also previously mentioned that the merchants had put a mine under the control system in the very citadel of rig rice control is also from a former issue. Without reference to the contents of the previous issues it is not possible to interpret correctly the innuendoes made by the writer. H.D. is therefore requested to furnish this office with the previous issues.

Id/-P.N Moos
16-9

Remembrancer of Legal Affairs.

x U.R. to H.D., No. 6253, dated the 17th September 1943.

S.A.K.
7-7-
4 copies

Office of the R.L.A.

There is no good faith xh in publishing defamatory statements professedly hearsay (see Gour's I.P.C.Vol. II page 2703). The passage in the article published in "Swatantr" relating to the imputation to Mr.Aminuddin of corruption though based on hearsay is clearly defamatory of Mr. Aminuddin. The writer by his comments on the alleged brainy trick of Mr. Aminuddin appears to convey the impression that the charge of corruption was not ill founded. The article appears therefore to be defamatory.

2. In the absence of previous issues of "Balavant" it is not possible to say whether the article under the heading "Did only the duty, but....." appearing in the issue of that paper dated 4-8-43 is defamatory.

Id/-P.K.Roos
30-11

Remembrancer of Legal Affairs.

U.O. to R.D.No. 8851. Mex dated the 1st December 1943.

S.A.K.
7-7-
4 copies

The question referred to the R.L.A. for advice is whether the publication of the names of persons convicted of price control, stock declaration and rationing offences under the usual "R" caption in newspapers would constitute defamation and expose Government to civil or criminal litigation.

2. Under the First Exception to section 499 of the Indian Penal Code, it is not defamation to impute anything which is true _____rning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the pulic good is a question of fact. Under the Fourth ~~fx~~ Exception to section 499, it is not defamation to publish a substantially true report of the proceedings of a court of justice or of the result of any such proceedings. In Rex v. Wright (8 T.R. 293at 298) it was held: "Though the publication of such proceedings may be to the disadvantage of the particular individual concerned, yet it is of vast importance to the public that the proceedings of courts of justice should be universally known. The general advantage to the country in having these proceedings made public more than counterbalances the inconvenience to the private persons whose conduct may be the subject of such proceedings." "But there is a wide difference between a report of judicial proceedings and comments thereon. The former is privilege ~~of-judicial-proc-~~ if, apart from good faith, it is substantially true, ~~it~~ but the latter is privileged only if it is made in good faith as a comment upon a matter of public importance. A sensational headline to the report is a comment and, if it is not justified, may constitute a libel." (See Gour's Penal Law of India, Vol. II, p. 2711). Publication in newspapers of names of persons convicted of offences under the Food Controller and Rationing Laws with a brief description of the offences committed and the penalty awarded would clearly come within the protection of the first and Fourth exceptions. The publication of names of such offenders under the usual "R" caption in newspapers would be justified on the ground of public good since it is calculated to dissuade people from contravening the Food Control and Rationing Laws, which in the present emergency must be universally obeyed.

Id/-P.N.Moos
8-12

Remembrancer of Legal Affairs.

U.R. to F.D.(Supply) (Mr.Bakhle), No. 9060, dated the 8th Dec. 43. S.A.K.

Office of the R.L.A.

If the allegations contain a measure of truth the paper could claim the benefit of the explanation to section 153-A. I.P.C. If the allegations are substantially untrue or are founded merely on rumour, their publicati would come within the mischief of section 153-A. I.P.C. and section 4. Indian Press (Emergency Powers) Act.

Id/-P.N.Moos
13-12

Remembrancer of Legal Affairs.

U.R. to H.D.(Spl.) No. 9147, dated the 13th December 1943.

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